IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

CRL.A.No. 641 of 1999()

ST.217/1996 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALAPPUZHA

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APPELLANT/COMPLAINANT:

V. PRASANNAN,
PUTHENPURAKKAL,
THIRUMALA WARD, ALAPPUZHA.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS/ACCUSED & STATE:

1.C.S. SUMESH,
CHOOLAPURAKKAL, THIRUMALA WARD,
PONJIKKARA, ALAPPUZHA.

2.STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADVS. SRI.R.HARIKRISHNAN -R1
SRI.C.A.RAJEEV
SRI.N.C.SAJITH
SMT.K.M.RASHMI
SRI.VARGHESE THOTTUNGAL
SMT.SINDHULAKSHMI
PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU -R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.641 OF 1999

Dated this the 30th day of May, 2007

JUDGMENT

This appeal is filed against the judgment in S.T. No.217 of 1996 on the file of the Judicial First Class Magistrate's Court II, Alappuzha. The complaint was filed against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the appellant - complainant was that the accused - first respondent borrowed from him an amount of Rs.85,000/- and issued Ext.P1 cheque in favour of the appellant in discharge of the said liability and that when the cheque in question was presented to the bank for encashment, the same was dishonoured due to insufficiency of funds in the account of the first respondent. On completing the statutory provisions, the complaint was filed. To prove the case against the first respondent, the appellant was examined as PW.1 and the Manager of the bank was examined as PW.2 and Exts.P1 to P6 were produced. On the

side of the defence, DW.1 was examined and Ext.D1 was produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. He denied the alleged transaction as well as issuance of the cheque in question. At the same time, DW.1, the father of the accused when examined stated that he had borrowed an amount of Rs.10,000/- from the appellant and had issued a cheque which belonged to the account of the first respondent without the knowledge of the first respondent. DW.1 further stated that when he issued the cheque to the appellant, the first respondent was a minor aged below 18 years. The trial court finding that the first respondent was a minor at the time when his father issued the cheque in question and that the appellant failed to prove any transaction between him and the first respondent acquitted the accused.

3. This Court heard the learned counsel appearing on either side. Learned counsel appearing for the appellant submits that Ext.P1 cheque belonged to the account of the first respondent and hence the learned Magistrate went wrong in passing the order of acquittal.

4. The trial court found that the first respondent was aged only 17 at the time of the alleged issuance of Ext.P1 cheque. The trial court also

found that no evidence was adduced by the appellant to show that there was any financial transaction between the appellant and the first respondent and that the first respondent himself had issued the cheque in question. The trial court further found from the evidence of DW.1 that the cheque in question was issued by DW.1 without the knowledge of the first respondent. Even though the appellant had given evidence to the effect that the first respondent came to his house, accepted the money and gave Ext.P1 cheque, there was no evidence to support his statement. Further, no question was put to DW.1 as to whether the cheque in question was issued by the account holder and whether the account was opened by the first respondent as per law as he was a minor during the relevant time. The appellant had also not chosen to make DW.1 a party to the proceedings under Section 420 I.P.C. All these reasons would show that the finding of the trial court is based on evidence. In the above circumstances, the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.641/99

JUDGMENT

30TH MAY, 2007.